

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEA SHEPHERD LEGAL,

Plaintiff,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION, *et*
al.,

Defendants.

Case No. C19-1485 JLR

STIPULATED MOTION AND
~~PROPOSED~~ ORDER FOR RELIEF
FROM 26(F) CONFERENCE,
INITIAL DISCLOSURES, AND
JOINT STATUS REPORT

Noted for Consideration:
November 12, 2019

JLR

Plaintiff SEA SHEPHERD LEGAL ("SSL") filed the above-captioned lawsuit under the Freedom of Information Act ("FOIA") against Defendants NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA") and NATIONAL MARINE FISHERIES SERVICES ("NMFS"), seeking disclosure of certain documents. *Sea Shepherd Legal v. NOAA, et al.*, 19-cv-463-JLR is a related case before the Court.

For the reasons stated below, the parties respectfully request that the Court vacate the Rule 26 deadlines (Dkt. No. 13), and instead allow the parties to submit a joint status report within the next 60 days.

The ultimate issue in a FOIA action is whether the agency in question has "improperly" withheld agency records. 5 U.S.C. § 552(a)(4)(B); *Kissinger v. Reporters*

1 *Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). This is typically a question
2 of law for the Court, rather than a question of fact, and thus, “[s]ummary judgment is the
3 procedural vehicle by which nearly all FOIA cases are resolved.” *Shannahan v. I.R.S.*,
4 637 F. Supp. 2d 902, 912 (W.D. Wash. 2009) (quoting *Los Angeles Times Commc’ns*,
5 *LLC v. Dep’t of Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006)). The parties agree that
6 the initial disclosure requirements of Rule 26(a)(1) and the requirements of Rule 26(f),
7 requiring the parties to prepare a discovery plan, are not appropriate in this case at this
8 time, as the litigation is unlikely to lead to trial, and very possibly not discovery. That
9 being said, SSL reserves the right to request discovery should evidence of bad faith or
10 other grounds for discovery emerge.

11 Thus far, the parties have worked cooperatively in an attempt to resolve this
12 litigation without motion practice. Defendants intend to produce the requested
13 documents imminently with a final determination letter. As further discussion is
14 expected after the production, counsel for the parties intend to continue to work together
15 on any issues. If at any time in the next 60 days it becomes apparent that resolution
16 between the parties is not feasible, the parties will submit a joint briefing schedule to the
17 Court.

18 **SO STIPULATED.**

19 Dated this 8th day of November 2019.

20 s/ Brett W. Sommermeyer
21 BRETT W. SOMMERMEYER, WSBA # 30003

22 s/ Catherine E. Pruett
23 CATHERINE E. PRUETT, WA BAR # 35140

24 SEA SHEPHERD LEGAL
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Attorneys for Plaintiff

SO STIPULATED.

Dated this 12th day of November 2019.

s/ Michelle R. Lambert

MICHELLE R. LAMBERT, NY # 4666657

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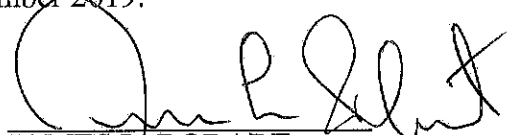
Email: michelle.lambert@usdoj.gov

Attorneys for Defendants

ORDER

IT IS SO ORDERED.

Dated this ¹²12 day of November 2019.


JAMES L. ROBART
United States District Judge